



H.R. 4040 - CPSC Reform Act – Conference Report

EXECUTIVE SUMMARY

The H.R. 4040 conference report reauthorizes and reforms the Consumer Product Safety Commission. This legislation also includes a number of provisions which increase safety standards on children's products and paint.

The Consumer Product Safety Commission (CPSC) is a Federal agency created in 1972 through the Consumer Product Safety Act to protect against unreasonable risks of injuries associated with consumer products. The CPSC has the authority to regulate the sale and manufacture of more than 15,000 different consumer products, including children's products and toys.

The bill passed the House on December 19, 2007, by a vote of 407-0. The Senate passed its version of the bill on March 6, 2008, by a vote of 79-13. Major differences between the House and Senate versions of the bill were worked out recently during a House-Senate conference.

According to Ranking Member Joe Barton (R-TX), "One of the roles of government is to get between kids and the sorts of hazards that are well beyond parents who aren't engineers and chemists with laboratories at their disposal. This reauthorization gives the CPSC more teeth and a deeper bite...This bill also makes toy safety a national concern instead of relying on the growing conglomeration of local and state rules that threatened to leave everybody confused."

The H.R. 4040 conference report is expected to be considered on the floor under suspension of the rules on July 30, 2008.

FLOOR SITUATION

The conference report to accompany H.R. 4040 – CPSC Reform Act is being considered on the floor under suspension of the rules. This legislation was introduced by Representative Bobby Rush (D-IL) on November 1, 2007. The bill passed the House on December 19, 2007, by a vote of 407-0. The Senate passed its version of the bill on March 6, 2008, by a vote of 79-13. On July 17, 2008, House and Senate conferees held a conference on H.R. 4040. The Conference Report was filed on July 29, 2008.

The bill is expected to be considered on the floor under suspension of the rules on July 30, 2008.

SUMMARY

Title I – Children's Product Safety

Lead in Children's Products: The conference report establishes specific limits on lead content in children's products. Any children's product that contains more lead than these limits allow will be treated as a banned hazardous substance, under the Federal Hazardous Substances Act. The Commission will periodically review and revise downwards the lead content limits, at least every five years. Certain products may be excluded from the lead content standards, at the determination of the Commission.

This conference report additionally establishes a more stringent lead paint ban than currently permitted under Federal standards. The acceptable level of lead content in paint is reduced from .06 percent to .009 percent.



LEGISLATIVE DIGEST

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Third Party Testing: The conference report language requires third party testing of certain children's products. Certain requirements for the accreditation of the third party testers are set forth in the report. The conference report also authorizes the Commission to inspect manufacturers' proprietary laboratories.

Children's Products Tracking Labels: Within one year, manufacturers of children's products must place marks on packaging to identify the location and date of the product's production.

Nursery Products Standards: The Commission will examine and assess the effectiveness of voluntary consumer product safety standards for infant and toddler products, and promulgate standards at least as stringent as the voluntary standards. The Commission must promulgate rules within one year of this assessment, and periodically review the standards to ensure high levels of safety. The Commission must also require infant and toddler product manufacturers to provide consumers with a registration form, and maintain a record of their contact information. Finally, the Commission must review recall notification technology and assess the effectiveness of this technology in facilitating recalls of infant and toddler products.

Labeling Requirement for Toys and Games: The conference report requires any toy or game advertisement that provides a direct means for purchase of the product to include a cautionary statement, if such a statement is required for that toy or game. The cautionary statement must be prominently displayed in the advertisement language, in conspicuous and legible type.

Mandatory Toy Safety Standards: The conference report language makes the American Society for Testing and Materials (ASTM) International standard the interim consumer product safety standard, pending an evaluation by the Commission. The Commission would then be required to establish mandatory standards by rule, after the relevant components of the standard are evaluated. This rule must be promulgated within one year of the completion of the Commission's assessment.

This Conference Report requires the Commission to periodically review its rules to ensure the highest level of safety for toys. States or other political subdivisions may promulgate their own standards, if the Commission finds they provide a higher degree of protection from injury and do not unduly burden interstate commerce.

Study: Within 90 days, the Comptroller General must initiate a GAO study to assess the risks and incidence of preventable injuries and deaths among minority children. The Comptroller General must report to Congress within one year with the study's findings.

Prohibition on Sale of Phthalates: The conference report language would permanently prohibit the sale of children's toys or child care articles that contain more than a set level of three phthalates. Three additional phthalates would be temporarily prohibited in children's products small enough to be put into a child's mouth. The sale of these products containing more than the acceptable levels would be prohibited on an interim basis until a review by a Chronic Hazard Advisory Panel (CHAP). After the Commission receives the report from the CHAP, the Commission would determine whether to continue the interim prohibition, to set alternative acceptable levels, or to repeal the prohibition altogether.

Note: Phthalates are esters that are used as plasticizers (substances added to plastics to increase their flexibility). They are used to turn a hard plastic into a flexible plastic. Such materials may often be found in plastic toys.

Preemption: The conference report also relies on the Federal preemption provisions of the underlying Consumer Product Safety Act and the other Acts the Commission administers. Standards enacted by the Commission, and those enacted directly by statute, preempt State law to ensure efficient and consistent enforcement, and avoid a patchwork of laws that apply different across the country. This preemption applies to lead content, lead paint, and phthalates and many other issues.



Title II – Consumer Safety Product Commission Reform

Reauthorization of the Consumer Product Safety Commission (CPSC): The bill reauthorizes the CPSC at the following funding levels:

- \$118.2 million for FY2010
- \$115.64 million for FY2011
- \$123.994 million for FY2012
- \$131.783 million for FY2013
- \$136.409 million for FY2014

Inspector General Audits and Reports: H.R. 4040 requires the Inspector General of the Commission to conduct reviews and audits to assess the Commission's capital improvement efforts and employee complaints about CPSC inspectors failing to enforce the rules or regulations of the Consumer Product Safety Act.

Industry Sponsored Travel Ban: The bill prohibits members or employees of the Commission from accepting travel, subsistence, or related expenses from a person seeking official action from, doing business with, or conducting activities regulated by the Commission.

Consumer Product Safety Database: The bill requires the Commission to establish and maintain a publicly available and searchable database on the safety of consumer products.

Prohibited Acts: The bill prohibits the sale, importing, or manufacturing of recalled products, and increases the civil penalty to \$100,000 for each violation and up to \$15 million for a related series of violations.

Whistleblower Protections: This legislation contains limited whistleblower protections for employees of retailers, manufacturers, and distributors that are similar to protections afforded by Congress to employees in many other sectors of the economy.

Import Safety Management: The bill requires that one year after the enactment of this act the Commission to develop a plan for sharing information and coordinating with U.S. Customs and Border Protection to identify shipments of consumer products that are in violation of the Consumer Product Safety Act.

All Terrain Vehicles: H.R. 4040 requires the Commission to publish a mandatory consumer product safety standard, the American National Standard for Four Wheel All-Terrain Vehicles Equipment Configuration, and performance requirements for ATVs, as well as bans Three Wheel ATVs.

BACKGROUND

The Consumer Product Safety Commission (CPSC) is a Federal agency created in 1972 through the Consumer Product Safety Act to protect against unreasonable risks of injuries associated with consumer products. The CPSC has the authority to regulate the sale and manufacture of more than 15,000 different consumer products, including children's products and toys. The CPSC develops voluntary and mandatory safety standards, bans dangerous products, issues recalls, and researches potential hazards associated with consumer products.

Recently, there have been several recalls of children's products for high levels of lead content. For nearly two years there have been warnings regarding imported products from China, especially.



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[Energy and Commerce Ranking Member Joe Barton Statement on Conference Agreement](#)

COST

The Congressional Budget Office (CBO) has not produced a cost estimate for the H.R. 4040 Conference Report, as of July 29, 2008.

STAFF CONTACT

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